

GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Government .Service – C.A.No.155/2011 in W.P.No.4449/2006 filed by Sri Md.Ghouse, Watchman, O/o. Assistant Director of Marketing, Nalgonda against his removal – Permission accorded to implement the orders of Hon'ble High Court of Andhra Pradesh – Orders – Issued.

AGRICULTURAL MARKETINTG AND CO-OPERATION (AM III.) DEPARTMENT

G.O.Rt No. 1118

Dated 01-10-2011
Read the following:

1. GO Ms.No.9, Finance & Planning Department, dated 08.01.1981.
2. Proceedings of Asst.Director of Marketing, Nalgonda NoA/5678/84, dt.27.9.1984
3. Proceedings of Asst.Director of Marketing, Nalgonda No.A/2067/90/1974, dt.10-8-1990
4. Proceedings of Asst.Director of Marketing, Nalgonda No.A/1519/94/567-1571, dt .17.10.1994
5. From the Asst. Director of Marketing, Nalgonda Lr.No.A/690/97, dt .24.5.97.
6. From the Director of Marketing, Lr.No.Estt.I(2)/784/97, dt.21.11.1997
7. Govt.Memo.No.,258/Mktg.III.1/2000-2,dt.3.5.2000.
8. Proceedings of Director of Marketing, Lr.No.Estt I(2)/84/97, dt.20.9.2000.
9. From the Hon'ble A.P.A.T. Order dt.3.12.2002 in OA No.6230/97.
10. From the Hon'ble A.P.H.C., Order dt.17.3.2006 in WP.No.4449/2006.
11. From the Hon'ble A.P.H.C., Order dt.23.3.2006 in WP.No.4449/2006.
12. From the Hon'ble A.P.H.C. Order dt.24.2.2010 in WP.No.4449/2006.
13. From Sri Md.Ghouse, Watchman representation dt.10.07.2006, addressed to C&DoAM., Hyderabad.
14. From the C&DoAM Hyderabad Lr.No.Estt.Govt.363/2007, dt.29.07.2011.

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ORDER:-

In the reference 4th read above, Sri M.D.Ghouse, Watchman who has been sponsored by Employment Exchange, Nalgonda was appointed in Last Grade Service under Rule 3(a) of Andhra Pradesh Last Grade Services in the vacancy caused due to the promotion of Sri Sudhakar, Watchman as Junior Asst. and subsequently his services has been regularized under Rule 10 of A.P. Last Grade Services with effect from 18-10-1994 and also probation was declared with effect from 17-10-1996. The Asst. Director of Marketing, Nalgonda vide his letter 5th read above while explaining the above position has sent proposals to Commissioner of Agricultural Marketing for creation of one post of watchman in the cadre strength.

2. In the reference 7th read above, based on the report of the Commissioner & Director of Agricultural Marketing, instructions have been issued to Commissioner & Director of Agricultural Marketing for removal of Sri Md.Ghouse on the ground, that the appointment is against the Provision of Act 2/94 and was appointed without the sanctioned post. Accordingly, the Commissioner & Director of Agricultural Marketing, vide reference 8th read above, has issued orders removing Sri Md.Ghouse. Aggrieved, Sri Ghouse has filed OA in A.P. Administrative Tribunal and also WP in A.P.High Court. The A.P. High Court in its order dt.25.9.2000 in WP No.18111/2010 has observed that the AP High Court is not inclined to go into the merits of the contentions, in view of the pendency of OA No.5799 of 2000 filed by the petitioner before the A.P.Administrative Tribunal questioning his removal from service. The A.P. High Court has however has

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observed that his services cannot be terminated as he was regularized and his probation was also declared. Since, the OA 5799 of 2000 is pending before the Tribunal, directed the A.P. Administrative Tribunal to dispose of the said OA filed by the petitioner after counters filed by the respondents therein, in accordance with law and pending disposal of OA No.5799/2000 by the Tribunal to continue Sri Ghouse as Watchman. Subsequently the A.P. Administrative Tribunal in its order dt.24.8.2004 in OA No. 5799/2000 has observed that the appointment of Sri Md.Ghouse, watchman is illegal without a sanctioned post of watchman and without following the procedure of appointment. However there is no objection for the Authorities in giving fresh posting to the Applicant if there is a sanctioned post of Watchman existing under the control of the 2nd respondent and while giving such posting seniority should be considered not only the Applicant but also the persons similarly situated at that of the Applicant and disposed of the OA .

3. Since, the Hon'ble A.P. Administrative Tribunal in OA No.5799/2000, dt.27.8.2004 has upheld the orders of removal by the Department his services were again removed with effect from 01.03.2006. Aggrieved by the orders, Sri Md.Ghouse, watchman has again approached Hon'ble A.P. High Court by filing WP No.4449/2006 and the A.P.High Court in its interim order 10th read above has ordered for status quo with regard to the operation of proceedings dated 20-9-2000 for two weeks and subsequent orders vide reference 11th read above has observed that the petitioner was appointed on being sponsored by the employment exchange concerned. In such case, prima facie, we find that the appointment is not in any way inconsistent with the provisions of Act 2 of 1994, Therefore, there shall be interim order as prayed for. The Hon'ble AP High Court in its final order dated 24.2.2010 has duly quashing the orders of Hon'ble A.P. Administrative Tribunal in OA NO.5799/2000, dt. 27.8.2004 in which the Hon'ble A.P.Administrative Tribunal has upheld the removal orders of Department on the ground that the petitioner was appointed in the existing vacancy and his name was sponsored by the local employment exchange and was appointed accordingly and it is not the case that the petitioner has misrepresented or suppressed the facts to the authorities and the petitioner may be aged around 55 years. It is stated that since his appointment in the year 1994, he is continuing as such therefore, the doctrine equity demands he should not dislodged from the employment for no fault of him.

4. In the reference 14th read above, the Commissioner & Director of Agricultural Marketing has reported that during the year 1997, when the District Treasury Officer, Nalgonda has stopped the salary of Sri Md. Ghouse, Watchman saying that there is no sanctioned post of Watchman at Office of Assistant Director of Marketing, Nalgonda, proposal have been furnished for payment of salary to avoid contempt due to which there is deviation caused, actually Office of the Commissioner & Director of Agricultural Marketing, would have requested for continuation of Watchman post in regular establishment as requested by Assistant Director of Marketing, Nalgonda and requested for ratification. He has therefore requested to continue the post of Watchman in regular sanctioned strength to Office of the Assistant Director of Marketing, Nalgonda with effect from 17.09.1984, as the contingent post of watchman was already converted into regular establishment by the Assistant Director of Marketing, Nalgonda in terms of G.O.Ms. No.9, Finance & Planning (Fin.Wing PRC-II), Department, dated: 08-01-1981, so as to continue Sri Md.Ghouse, Watchman, at Office of the Assistant Director of Marketing, Nalgonda with all benefits, with effect from 18.10.1994, so as to avoid further legal complication.

5. Government have examined the entire issue keeping in view the orders issued in the 1st read above, and the proceedings of Assistant Director of Marketing, Nalgonda in the reference 2nd to 4th read above, and also the orders of

A.P.Administrative Tribunal and A.P.High Court in the references 9th and 13th read above has observed that the action of Assistant Director (Marketing) ,Nalgonda in having converted Sri Sudhakar into regular Last grade service is in accordance to para 5 of G.O.Ms.No.9, dt.08.01.1981 and also in having engaged the services of Sri Ghouse in the resultant vacancy is also in accordance with Sec 4(c) of the Act 2/04, has decided to implement the orders of A.P.High Court dt.22.4.2010 in WP No.4449/2006.

6. Accordingly, Government hereby permitted the Commissioner & Director of Agricultural Marketing to implement the orders of A.P. High Court dt.22.4.2010 in WP No.4449/2006.

7. The Commissioner & Director of Agricultural Marketing, shall take further necessary action to send compliance report to Hon'ble High Court of Andhra Pradesh under intimation to the Government.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

I.Y.R.KRISHNA RAO
PRL.SECRETARY TO GOVERNMENT.

To
The Commissioner & Director of Agricultural Marketing, A.P., Hyderabad.
The Asst.Director of Marketing, Nalgonda.
The Individual through Asst.Director of Marketing,, Nalgonda.
The Government Pleader for Marketing, A.P.High Court for information
Copy to:
Finance (PC.III) Dept.
SF/SCs.

// FORWARDED BY ORDER //

SECTION OFFICER.